

BOARD OF ZONING APPEALS
MINUTES
June 27, 2006

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on June 27, 2006, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, and Kansas.

The following board members were in attendance:

BICKLEY FOSTER, ERMA MARHAM, DWIGHT GREENLEE, STEVEN ANTHIMIDES and JOSHUA BLICK arrived at 1:33pm

Board members absent:

JUSTIN GRAHAM and JAMES RUANE

City of Wichita staff present:

HERB SHANER – Office of Central Inspection present.

SHARON DICKGRAFE – City of Wichita, Law Department

The following Planning Department staff members were present:

JESS MCNEELY, Secretary.

YOLANDA ANDERSON, Recording Secretary.

FOSTER We have a quorum and we will start the meeting at 1:35pm.

FOSTER First item on the agenda is the minutes of May 23, 2006. Is there a request for any changes? If there is no request for changes, I will ask that we approve the May 23, 2006 minutes.

GREENLEE Moved

ANTHIMEDES Seconded

FOSTER I am disqualifying myself after finding out last night that my son worked on the landscape plan for this company around the sign area for the variance requested. Ms. Markham can take over from here

MARKHAM We will now here case BZA2006-00013

MCNEELY **BACKGROUND:** The applicant is requesting a variance to increase the number of permitted signs for an office building from one to two. The 48 square-foot sign in question exists on the application area, facing Maize Ct., for a multi tenant office building on the site. See the attached site plan, elevation, and applicant's letter; the variance request is for the sign labeled "Sign 2" in the enclosed materials.

The site is zoned "GO" General Office, which permits a ground or pole identifications sign for each business on a zoning lot. The total area of all ground or pole identification signs on a zoning lot is limited to .5 square feet per lineal foot of frontage, which computes to a total of 98.72 square feet of ground or pole identification signs permitted

on the subject property. The site is under Protective Overlay 111, a condition of rezoning this entire Maize Ct. development in 2001. The Unified Zoning Code specifies that all lots under one Protective Overlay be considered one zoning lot for signage purposes. This site previously received a sign code variance (BZA2005-33, see attached ordinance) permitting two ground signs on the site at 96 square feet each for a total of 192 square feet.

One 96-square foot multi-tenant sign exists for the application area, permitted under the previous variance, and located in the entrance median to Maize Court. The sign requiring this current variance request would be the second multi-tenant sign for the application area building. Businesses in the GO zone are permitted building signs, located on the face of the building, as this building has within clearstory windows above the entrance doors.

Surrounding property to the north and south is developed with single-family neighborhoods. East of the site is office development on Maize Ct. and within the same Protective Overlay, west of the site is a vacant NR Neighborhood Retail zoned site; further west, across Maize Road is the Newmarket Square commercial development.

ADJACENT ZONING AND LAND USE:

NORTH	“SF-5“ Single-family Residential; Single-family residence
SOUTH	“SF-5“ Single-family Residential; Single-family residences
EAST	“NO“ Neighborhood Office; Offices
WEST	“NR“ Neighborhood Retail; Vacant

The five criteria’s necessary for approval as they apply to variances requested.

UNIQUENESS: It is the opinion of staff that this property is not unique, inasmuch as the application area already has permitted signage along the Maize Road corridor that has been increased in size by a previous variance.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested for a second sign for an office building will adversely affect the rights of adjacent property owners, as residences south of the site, with 2nd floor windows and elevated decks in direct sight of the sign, would be subject to externally lit signage not normally permitted by code.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the sign code would not constitute an unnecessary hardship upon the applicant, as signage exists along Maize Road, and the office is permitted building signs identifying individual tenants.

PUBLIC INTEREST: It is the opinion of staff that the requested variance for an additional sign per business would adversely affect the public interest, as approval of the requested variance would encourage and set precedence for variance requests on three other similar lots within the same Protective Overlay.

SPIRIT AND INTENT: It is the opinion of staff that granting of the requested variance for a second sign per business would oppose the general spirit and intent of the Sign Code inasmuch as the sign regulations are designed for application to include small office buildings with one ground or pole sign, and building signs. The intent of these regulations is to have uniform standards.

RECOMMENDATION: It is staff's opinion that all the conditions necessary for the granting of the variance do not exist. Staff would note that the Unified Zoning Code, and the Variance Application Instructions clearly point out that the purpose of a variance is not for "correcting mistakes that cause a property to come into non-compliance with a particular Code requirement. Variances are not for situations where complying with a particular Code requirement is inconvenient or more expensive." Therefore, it is the Secretary's recommendation that the variance to allow a second ground sign for an office building be DENIED. If, however, the Board should determine that the conditions necessary to grant the variance exist, then it is the recommendation of the Secretary that the variance to allow a second ground sign for an office building be subject to the following conditions:

1. All signage on the subject property shall conform to the requirements of the Sign Code except that there be a variance granted to permit a second sign for a business within "GO" General Office zoning.
2. The sign elevation and location shall be in substantial conformance with the elevation and site plan submitted with this application.
3. The applicant shall obtain all permits necessary to construct the sign and the sign shall be erected within one year of the issuance of the sign permit, unless such time period is extended by the BZA.
4. The sign shall have no lighting.
5. The resolution authorizing this variance may be declared null and void upon findings by the Board and that the applicant has failed to comply with any of the foregoing conditions.

MCNEELY Are there any questions of staff?

BLICK How many tenants are in the building now?

McNEELY You can ask the agent for the applicant. If I look at the ground sign for this office building, I count six tenants signs on the first ground sign and five for the second sign.

BLICK Is the insurance agent the only one not on this sign?

McNEELY Not sure, I am aware that there are tenants that are on both signs.

MARKHAM The same tenants on both signs?

McNEELY This sign is permitted under the sign code that is the designated sign for this building. The second sign, you see here, is not permitted under the sign code as a second sign. Of course, our point would be that this sign has already received a variance that increase the square footage of signage so there is not a need for

the second sign. We do not see a uniqueness or hardship that would warrant a second sign.

- BLICK On the face of each tenant's building, there is signage in letters above each one.
- McNEELY On the face of the building, there is signage there also. I do not believe those are max out for what is authorized under the sign code that will be 15 inch tall letters for tenant identification signs on the face of the building.
- MARKHAM When you were showing the three lots is there an access passageway between the lots or is it just a continuous building?
- McNEELY Maize court would be the street that would access all of those developments. Currently, the application area has one building on it and the two lots to the east of it, each have a building on the lot.
- MARKHAM I am trying to get an understanding. To the north, is there access between the buildings? The backside of it is unincorporated and may soon be developed.
- DICKGRAPH I think she wants to know whether it is one parking lot that you can go into the first building and drive to your second or third building.
- MARKHAM Yes, and walk between the buildings.
- MCNEELY Currently it shows, this parking lot does not connect to the east of it. If and when the west of the application area is developed, that parking lot will connect to the application area.
- MARKHAM You said that the lettering on the face of each individual tenant's business can be how tall?
- McNEELY They can be 15 inches tall. However, the existing lettering is not 15 inches tall. Any building in GO zoning is authorized for 15 inches tall tenant identification signs on the building.
- MARKHAM Could this variance be correcting a mistake that could have been made for the building of the sign?
- McNEELY Well that is a matter of prospective, the applicant is requesting a variance for a sign that was built without a permit. The sign is not authorized under the sign code. Therefore, a variance would correct their mistake of building an unauthorized sign without a permit.
- MARKHAM If they would have gotten a permit, they would have known about the rules?
- McNEELY If they had applied for a permit, they would have been informed that it would be considered a second sign and a second sign would not have been authorized.

MARKHAM Was this sign built by the architect?

McNEELY I am not certain who built the sign.

MARKHAM Anymore questions? Okay one more question.

BLICK The future site sign is already pre-approved and authorized up here?

McNEELY The future site sign is authorized the same amount of square footage as the sign one location. So, where they have this sign already existing at the median drive court that same size sign would then be authorized up here? That is why the previous variance granted was an increase in square footage of authorized signage along Maize frontage.

MARKHAM Is any more questions?

McNEELY The agent is here to speak.

MARKHAM Yes and we will hear him. Is there anyone else here to speak on this matter?

Paul Cavanaugh, Places Architect, 100 E. Waterman. I thank you for your time. I sat on the HPB. I understand how good it is for you to spend your time helping others. I am here as an agent for the owner Randy Dean. May I hand out some photographs?

MARKHAM Are these different from the other handouts?

CAVANAUGH Yes.

MARKHAM We will need to take time to look at the photographs.

DICKGRAFE Is there a copy for the secretary. Anything that is submitted, we need to keep in case there is an appeal.

CAVANAUGH Yes, you can make as many copies as you like. A couple of areas for clarification and I am speaking from the prospective of the developer and property owners. Randy Dean purchased the second lot and the third lot on the cul de sac. About a year ago or so, a potential tenant was negotiating with the owner at the time to purchase that property and build a retail center on it. It became apparent to them that they wanted an additional sign along with the monument sign to service their building. They came back and asked for that variance for the other 96 square foot. The second 96 square foot sign that you see is the future sign location that you see and it was approved. That potential tenant has gone his way and is no longer in the picture. The monument sign located on sign one. It was intended by all the property involve in this cul de sac for lots 2, 3, and 4 and the tenants of those buildings. You can see from the copy of the sign that you have in your packets, those signs are going to get pretty small. Randy was the first person to purchase a lot and to build his building. The number two building, you see there. About the same time the

variance was requested for the lot 1 sign. Randy did build the second sign as the sign two sign to help identify the tenants. If you been on Maize Road, you can see that the large sign identifies Chadworth's Place. It is difficult to see the individual tenants by the time they are divided down into the number of tenants we expect in this court. It is difficult to see which tenants are in there and which are not. So you find Chadworth's Plaza, you can see from the photographs of the sign on that lot that is not a distasteful, non-classy cluttered signed. It is done with some taste and landscaping. I do not believe that we have any discussions from the adjacent property owners about that sign in regards to complaints. We had address the same five criteria's, Jess has done it from the City's prospective but we want to address it from our prospective. The number of variances, from our prospective, the number of variances, the two signs, the 96 square foot signs along Maize Road, who they pertain to, who they are suppose to identify, the size of the signs on the original 96 square foot sign and the timing of when Randy built his sign and the timing made it uncertain on whose went on first. Randy when he built his sign did not realize there was a limit to the building identification signs. The granting of this variance will not affect the rights of the adjacent property owners. It has been in place for over a year and we have no complaints or comments of the sign from adjacent property owners. We realized that to the north of us that it will be developed commercially as time goes by, in fact, I think things are in the work for that property. This is going to be an intensely commercial and retail and office development. We do not think the sign in place causes a hardship. Randy has a sign in place that will have to be destroyed if this variance is not granted. We will have to take it down and go through the process of requesting a variance again of some sort to determine how large the sign needs to be on there. I think that is a hardship for the property owner. I do not see how this particular sign adversely affects the public health, safety, morals, order, convenience, general welfare of the harmonious development of the community if their had been no complaints nor comments made to this point. It does help identify the tenants businesses that are trying to make a living and conduct business on that cul de sac. I think we understand the intent sign code that it prevents over signage, cluttering of signs, distasteful and distracting signs. We do not believe this particular sign does any of that. Randy anything else I can add to those comments. For those reasons, we are asking for the variance of this sign. I was the architect on the buildings but not on this sign. We believe it is a handsome development and we believe we have not done anything to damage the class of that cul de sac. Are there any questions?

MARKHAM Where it has future sign, has that sign been put in place yet? What was the time frame for you to do that?

CAVANAUGH Let me look.

MARKHAM I read in his comment, 2 years.

DICKGRAFE It is 1 year and the resolution was attached to your packet from the resolution from last year's sign code. It was granted on July 26, 2005. Oh, it is two years, I am sorry.

CAVANAUGH Yes, it is two years. I do not know what is going to happen on that property. I think it has been purchased. I do not know who purchased it or what they intend to do with it or the signage.

MARKHAM That sign would reflect the tenants that are in the Chadworth's Plaza?

CAVANAUGH The future sign location?

MARKHAM The future sign.

CAVANAUGH No, it would only reflect what in that first building there in lot one. The second the sign one location or the existing side down on the south, the existing sign that is in place now will show the tenants for the other three buildings behind building number one.

MARKHAM So, the number two sign, I noticed from your picture is facing Maize Road.

CAVANAUGH Yes, it is facing the entrance's drive. Yes, you are right.

MARKHAM So, is it down into the cul de sac?

CAVANAUGH I am not sure how many feet it is, maybe 200 feet off of Maize Rd.

MARKHAM Okay but the large sign, sign one can be seen from Maize Road?

CAVANAUGH Yes it can.

MARKHAM That was my question.

MARKHAM Is there any one else here that has questions? Okay, we will now confine questions to the board.

MARKHAM The variance will be correcting a mistake that has been made by the builder. The builder did not get a permit. Otherwise, they did not know. One of the things we should keep in mind, is the lighting of the sign could cause a problem from the neighbors. The other thing to keep in mind is the intent of sign code is to prevent over-signage. Then we undermine the purpose of the regulation by giving variance to correct mistakes.

ANTHIMEDES One thing I notice on sign one, there are 16 and on sign two there is only 5. So even if they have their sign filled up, they still have room to put it on the one with sixteen. So if that sixteen one gets filled up, they would come back and have to get another sign for hardship purposes.

MARKHAM Are we ready to vote on this?

GREENLEE I moved that the variance be denied according to the conditions set forth in the secretary's report that all condition set out in sections 2.12.590 B of the code of the City code have been find not to existed.

DICKGRAFT You are going to incorporate the reasons for denial to be contained in the secretary's report?

GREENLEE Yes

BLICK seconded

Motion carried 4-0 DENIED

MARKHAM Now I will turn it back over to Mr. Foster.

FOSTER This is the first time in 6 years that I had a conflict of interest.

FOSTER We will go to Herb

SHANER Nothing to report

FOSTER McNeely do we have any cases next month?

McNEELY No cases were filed and we do not have a hearing in July.

GREENLEE I move that we adjourned.

MARKHAM Seconded.

FOSTER Moved by Greenlee and seconded by Markham.

Adjourned 2:47pm